IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO 3690 OF 2005

1. Shri Anant S. Tambde, Age 65 years)
2. Shri S.K. Shetye, Age 62 years)
3. Shri R.M. Shere, Age 67 years)
4. Shri J.R. Bavkar, Age 62 years)
5. Shri S.M. Berde, Age 62 years)
6. Shri M.T. Kasar, Age 65 years)
7. Shri M.R. Patole, Age 58 years)
8. Shri A.H. Mapari, Age 53 years)
All godown keepers, C/o. Shri Anant)
S. Tambade, Res. At Varchi Peth,)
Rajapur, At & Post Rajapur,)
District : Ratnagiri) .....Petitioners.

V/s

1. The Collector)
Ratnagiri District, Ratnagiri)
)
2. The Commissioner (Supply))
Konkan Division, Konkan Bhavan,)
New Mumbai.)
)
3. The Secretary,)
Department of Food & Civil Supplies,)
Mantralaya, Mumbai 32.)
)
4. The State of Maharashtra) ...Respondents.

Mr. Neel Helekar for Petitioners.

Mr. V.P. Malwankar, Assistant Government Pleader, for Respondent Nos. 1 to 4.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **December 19, 2006**

ORAL JUDGMENT: (Per H.S. Bedi, C.J.)

1. The petitioners joined as temporary seasonal godown keepers under the Food and Civil Supplies Department between the years 1964-67. As their services were not being regularized, they filed Original Application No.902 of 1993 before the Maharashtra Administrative Tribunal at Mumbai and, during the pendency of these proceedings, the State Government itself by its Resolution dated 24/01/2000 took a decision to regularize the services of all such employees. As the Petitioners were unable to produce the Government Resolution dated 24/1/2000 before the Tribunal, Original Application No. 902 of 1993 was dismissed on 4/5/2001. The Petitioners, thereafter, filed Review Application No.33 of 2001 against the Order of the Tribunal dated 4/5/2001 which was allowed on 18/10/2002 with a direction to relax the age and educational qualifications in respect of the applicants and to regularize their services irrespective of the fact that they had been superannuated during the pendency of the application and also to grant them deemed date of absorption on the basis of their seniority with all consequential benefits. It appears that as the respondents

were not acting in accordance with the directions issued by the Tribunal, the petitioners filed a Contempt Petition before the Tribunal as well and while this matter was yet pending, the Tribunal issued several orders granting regularization of services to the petitioners from various dates. These orders have been appended as Exhibits to this Writ Petition. The Contempt Petition was accordingly disposed off. The petitioners have accordingly sought a clarification of the order of the Tribunal that though the consequential benefits would include retiral benefits, the date from which they had to be computed has to be decided by this Court.

2. The respondents have in their reply pointed out that petitioners were only seasonal workers employed for some months in a year and that some monetary benefits had been given to them, keeping in view the date of absorption. It has been pleaded alternatively that if any clarification was required with respect to the order of the Tribunal, the proper remedy was to approach the Tribunal and not to come to this court by way of this Writ Petition.

3. It is true that one of the remedies available to petitioners would be to approach the Tribunal for clarification but we find from the facts that the petitioners have retired since long and the Contempt Petition filed by them has also been dismissed by the Tribunal on account of a substantial compliance with its order. It would therefore be futile for them to approach the Tribunal yet again. As already mentioned above, the limited question before us is as to the date from which the retiral benefits have to be computed.

4. The learned Counsel for Petitioners has placed before us the Maharashtra Civil Service (Pension) Rules, 1982 and, in particular, Rule 30 thereof to support his case. We reproduce Rule 30 hereinbelow.

> **"30. Commencement of qualifying service.**-- Subject to the provisions of these Rules qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in

> an officiating or temporary capacity: Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency....."

A bare perusal of this rule would indicate that if a government employee is holding a substantive post at the time of his retirement, his qualifying service shall be computed from the date of his first appointment either substantively or in an officiating capacity or temporary capacity. It is clear from the record that petitioners had been given temporary appointment as seasonal godown keepers and this fact has been recognized by the Tribunal as also by the respondents in their reply before us. In this view of the matter, we find that the entire period of service from the date of their joining would have to be counted for the purpose of computing their entitlement and quantum of pension.

5. We accordingly allow this Petition and direct the

respondents to make payment to petitioners in accordance with their qualifying service within a period of 6 months from today. Rule is made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

V.M. KANADE, J.